Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Calling Party Pays Service Offering	**)**	**WT Docket No. 97-207**
in the Commercial Mobile Radio Services	**)**	

Comments of Cincinnati Bell Telephone Company

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SUMMARY

Cincinnati Bell Telephone ("CBT") supports the continuing availability of CPP as an optional service offering to CMRS subscribers. In fact, CBT has been providing billing and collection services for CPP charges on behalf of two CMRS providers for more than ten years. Based upon these years of experience and the success of CPP locally, CBT respectfully submits that federal intervention is not necessary for CPP to be made available on a nationwide basis.

CBT urges the Commission to refrain from prescribing burdensome regulations aimed at ensuring the success of CPP. If the Commission takes any action with respect to CPP, CBT posits that the Commission should adopt only minimal notification guidelines in the interest of consumer protection. More importantly, the Commission should not reverse over ten years of Commission precedent concerning billing and collection services by re-regulating these competitive services. LECs should, therefore, not be required to provide billing and collection services for CMRS carriers seeking to offer CPP to their subscribers. As with any other service offering by telecommunications carriers, the success or failure of CPP should be dictated solely by market conditions.

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These comments are submitted on behalf of Cincinnati Bell Telephone Company ("CBT") in response to the Commission's July 7, 1999 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1]

I. INTRODUCTION

This NPRM seeks comment on a variety of issues related to calling party pays ("CPP") service offerings by commercial mobile radio service ("CMRS") providers. Specifically, the Commission seeks to address two primary concerns related to CPP: (1) the development of a uniform nationwide notification system and (2) the need for Commission regulation of local exchange carrier ("LEC") billing and collection services. The Commission tentatively proposes to adopt "limited rules" with respect to CPP in order to remove any obstacles preventing the greater availability of this service option to consumers.[2]

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[1] Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Proposed Rulemaking, FCC 99-137, released July 7, 1999 ("NPRM")

[2] NPRM at ¶29.

CBT agrees with the Commission that CPP has the potential to stimulate the expansion of wireless communication services and to benefit CMRS consumers. In fact, CBT has provided billing and collection services for CPP charges on behalf of both Ameritech Communications, Inc. and Airtouch Communications, Inc. since 1987. Based upon the twelve years of experience CBT has had billing and collecting for CPP services, CBT agrees with other commenters to this proceeding[3] who have urged the Commission to rely on competitive market forces rather than regulation to guide the development and availability of CPP.[4] Just as the Commission has recognized that the industry is best suited to resolving the technical problem of "leakage,"[5] the Commission should allow the industry to resolve other CPP issues such as customer notification and billing and collection without unwarranted federal intervention.[6] In particular, the Commission should refrain from adopting any rules or regulations that require LECs to provide billing and collection services to any CMRS provider. Regulation of billing and collection services is not only unnecessary for the viability of CPP but is contrary to the Commission's repeated position that billing and collections services are competitive and need not be regulated.

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[3] Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, FCC 97-341, released October 23, 1997. ("NOI")

[4] See, e.g. United States Telephone Association ("USTA") Reply Comments to NOI at 2; BellSouth Corporation Reply Comments to NOI at 2; SBC Communications, Inc. ("SBC") Reply Comments at 3.

[5] NPRM at ¶26.

[6] See, e.g. GTE Comments to NOI at 17; Sprint Corporation Comments to NOI at 2; USTA Comments to NOI at 6.

II. THE COMMISSION SHOULD ADOPT ONLY MIMIMAL GUIDELINES FOR CALLING PARTY NOTIFICATION

The Commission has concluded that calling party notification is necessary to avoid customer confusion brought about by the widespread introduction of CPP offerings.[7] Such notification will put calling parties on notice that they are placing a CPP call and will be billed for charges associated with the call.[8] The Commission has also determined that a uniform nationwide notification system is necessary to facilitate the implementation of CPP.[9]

CBT submits that the Commission need only adopt voluntary, flexible guidelines to assist the industry in the development of customer notification. As proposed by the Commission, a simple verbal message containing the four elements outlined at NPRM ¶42 is sufficient to protect consumers who may be unfamiliar with CPP. The elements include appropriate information to allow the calling party to make an informed decision with regard to accepting the charges associated with a CPP call and, most importantly, ensure that the calling party has an opportunity to terminate the call prior to incurring any CPP charges.

If adopted as guidelines rather than strict requirements, these elements would retain the flexibility necessary for the industry to customize and/or modify the notification message as needed. Initially, customized messages will enable CMRS carriers to address the unique characteristics of the markets in which they offer CPP. Once CPP has been available for a period of time, however, some carriers may need to refine the notification message as a result of increased public awareness of CPP or changes to CPP services. In urging the Commission to

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[7] NPRM at ¶30.

[8] Id. at ¶31.

[9] Id. at ¶33.

adopt the "least burdensome rules" for customer notification, Cellular Telecommunications Industry Association ("CTIA") points out that "the Commission should not foreclose the possibility that, in time, carriers may develop other notification methods that could better achieve the Commission's objectives."[10] Moreover, as noted by CTIA, flexible guidelines would allow CMRS providers to provide the message themselves or contract with other carriers (i.e. LECs) for provision of the notification message.[11] In today's vibrant CMRS marketplace, it is in the best interest of CMRS providers offering CPP to develop a system of notification, one which will encourage the calling parties to make CPP calls and accept related charges. It is, therefore, unnecessary for the Commission to mandate strict requirements for notification.

The Commission also seeks comment on whether its proposed notification is sufficient to establish the calling party's obligation to pay the CMRS provider for a CPP call.[12] CBT agrees with the Commission that the relationship between the provider and calling party is analogous to that established in the "casual calling" context.[13] In its 1997 decision concerning casual calling, the Commission suggested that so long as the carrier provided the calling party with sufficient information to make an informed decision about whether to complete or terminate the call, the notification was sufficient to establish a binding obligation on the calling party to pay for the call.[14] The Commission's rationale is equally applicable with regard to consumers who use CPP

[10] CTIA Comments to NOI at 12.

[11] Id. at fn. 17.

[12] NPRM at ¶52.

[13] Id. at ¶51.

[14] Id.

services. Thus, adequate notification regarding the general terms of the CPP call would be sufficient to establish an obligation on the calling party to pay for the completed call.

III. THE COMMISSION SHOULD NOT REQUIRE LECs TO PROVIDE BILLING AND COLLECTION SERVICES TO CMRS PROVIDERS

The Commission seeks comment on a number of issues related to billing and collection for CPP charges. Among the requests for comment, the Commission questions whether LEC billing and collection is needed for CPP to be a viable service option nationwide.[15] If so, the Commission asks whether LECs should be required to provide billing and collection services or billing and collection information to CMRS providers.[16] CBT submits that LEC billing and collection is not necessary for the viability of CPP offerings. Billing and collection service is highly competitive and should remain deregulated in accordance with Commission precedent.

Mandatory LEC billing and collection is not necessary for widespread introduction of CPP offerings. Although some CMRS providers suggest that there are no alternatives to LEC billing and collection,[17] the record in this and other proceedings[18] provide clear evidence that there are several options available to CMRS providers seeking to bill CPP charges. For example, the CMRS provider could bill its own CPP charges, contract with a non-communications

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[15] NPRM at ¶55.

[16] Id. at ¶56.

[17] See, e.g. Vanguard Cellular Systems, Inc. ("Vanguard") Comments to NOI at 6; Airtouch Communications, Inc. ("Airtouch") Comments to NOI at 18; Omnipoint Communications, Inc. ("Omnipoint") Comments to NOI at 7.

[18] See, e.g. AT&T Wireless Services, Inc. ("AT&T Wireless") Comments to NOI at 2-3. See also Detariffing of Billing and Collection Services, 102 FCC 2d 1150, *recon. denied*, 1 FCC Rcd 445 (1986) (the Commission concluded that "competition is defined not only by credit card companies, collection agencies, service bureaus and the LECs, but by the customers (ICs) themselves.") Id. at 1170; Audio Communications, Inc. – Petition for a Declaratory Ruling that the 900 Service Guidelines of U.S. Sprint Communications Co. Violate Sections 201(a) and 202(b) of the Communications Act, 8 FCC Fcd 8697 (1993) (finding that competition was available for billing 900 information services.)

company to provide billing and collection, or could contract with a billing and collection clearinghouse.[19] The only information necessary to pursue one of these alternatives is the calling party's Billing Name and Address ("BNA"), information readily available to all CMRS providers under LECs' tariff offerings or by contract. As GTE has stated, "none of the barriers standing in the way of CMRS providers offering a CPP option are related to a LEC failing to make billing information available to a CMRS provider…."[20] CTIA has similarly concluded that the information necessary to bill and collect CPP charges is presently available to CMRS providers. According to CTIA, who represents the largest CMRS providers,[21] mandatory billing and collection services are not required for CPP.[22]

Given the availability of BNA information and the number of billing options available to CMRS providers offering CPP, the Commission should refrain from re-regulating LEC billing and collection services. In its 1986 order detariffing billing and collection services, the Commission concluded that because billing and collection services were competitive, they were not a common carrier communications service subject to the Commission's jurisdiction under Title II of the Communications Act.[23] As evidenced by other carriers' use of clearinghouses and credit card companies, as well as carriers who bill for themselves, billing and collection services

[19] See U S West, Inc. Comments to NOI at 7-8. U S West comments on the efforts of an industry group, the National Calling Party Pays Forum, working toward the establishment of a national commercial clearinghouse for the billing and collection of CPP charges.

[20] GTE Comments to NOI at 22. See also CTIA Reply Comments at 5.

[21] CTIA Comments to NOI at fn. 1.

[22] CTIA Reply Comments at 5-6.

[23] Detariffing of Billing and Collection Services, 102 FCC 2d 1150, *recon. denied*, 1 FCC Rcd 445 (1986).

are no less competitive today and therefore remain beyond the Commission's Title II jurisdiction.

Some commenters have also suggested that the Commission should exercise Title I ancillary jurisdiction to require LECs to provide billing and collection services for CPP offerings.[24] As stated in the detariffing order, the Commission decided that an exercise of Title I jurisdiction "requires a record finding that such regulation would be directed at protecting or promoting a statutory purpose."[25] In that order, the Commission concluded that because there was competition in the provision of billing and collection services, "no statutory purpose would be served by continuing to regulate billing and collection service…."[26] Again, the competitive market in billing and collection services available to CMRS providers and the availability of alternatives indicate that there is no statutory purpose upon which the Commission can base an exercise of its ancillary jurisdiction here.

Aside from the threshold issue of jurisdiction, the Commission should not seek to re-regulate LEC billing and collection based on its cost-effectiveness in the provision of CPP services. As noted by SBC Communications, Inc.,

> [t]he question of whether a CMRS provider can efficiently and cost effectively offer CPP is not the relevant issue. LECs should not be required to perform billing and collection service for CPP simply because they may be able to do so more efficiently. The decision by a CMRS provider to incur additional cost to offer CPP is a marked-based decision.[27]

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[24] See, e.g. Airtouch Comments to NOI at 18; Omnipoint Comments to NOI at 14.

[25] Detariffing of Billing and Collection Services, 102 FCC 2d 1150, 1170 *recon. denied*, 1 FCC Rcd 445 (1986).

[26] Id.

[27] SBC Communications, Inc. Reply Comments to NOI at 16.

To justify a requirement that LECs bill and collect for CPP on cost-effectiveness would, in effect, result in LECs subsidizing CMRS providers' CPP offerings. This is neither good public policy, nor good business. As noted by GTE, "offering CPP requires CMRS carriers to incur certain costs…The decision to incur these costs is a market-based decision that depends upon an evaluation of the benefits that may be provided by CPP weighed against the costs."[28] The market, i.e. the public's demand or lack thereof, should determine whether CPP is a viable and cost-effective service option for CMRS providers to offer. The Commission should not require LECs to provide billing and collection services because doing so would prevent the market from working properly.

IV. BILLING AND COLLECTION INFORMATION IS NOT A NETWORK ELEMENT SUBJECT TO UNBUNDLING PURSUANT TO SECTION 251(c)(3) OF THE ACT

The Commission seeks comment on whether it has jurisdiction to require LECs to provide billing and collection information as an unbundled network element ("UNE") pursuant to Section 251(c)(3) of the Act.[29] CBT contends that the answer is no.

First, the Commission does not have the authority to require LECs to provide billing and collection information on an unbundled basis because this information does not meet the statutory definition of "network element." Section 153(29) defines "network element" as the "facilities or equipment used in the provision of a telecommunications services" as well as "the features, functions, and capabilities that are provided by means of such facility or equipment." The Act expressly includes "information sufficient for billing and collection" as one of the

[28] GTE Comments to NOI at 12.

[29] NPRM at ¶66.

features, functions and capabilities that are provided "by means of" the facilities or equipment. As explained by Bell Atlantic, CMRS providers do not purchase any "facilities or equipment" in the provision of CPP and are, therefore, not entitled to "information sufficient for billing and collection" provided "by means of" an ILEC's facilities or equipment under the Act's definition.[30] Thus, as defined by the Act, "information sufficient for billing and collection" does not stand alone as a "network element" that must be made available on an unbundled basis.

Second, even if the Commission determines that "information sufficient for billing and collection" meets the statutory definition of "network element," such information does not meet the "necessary and impair" standards set forth in Section 251(d)(2) of the Act. In AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999), the United States Supreme Court found that the Commission did not give appropriate consideration to the "necessary and impair" standards of Section 251(d)(2) of the Act when determining what elements were to be unbundled. While the Commission acknowledges that it must apply these standards in determining whether "information sufficient for billing and collection" must be unbundled,[31]no reasonable application of these standards could result in a requirement that "information sufficient for billing and collection" be unbundled.[32]

In response to the Commission's April 16, 1999 Second Further Notice of Proposed Rulemaking in CC Docket No. 96-98, CBT indicated in its Comments "that regardless of the

[30] Bell Atlantic Comments to NOI at 10.

[31] NPRM at ¶66.

[32] CBT acknowledges that on September 15, 1999, the Commission adopted the Third Report and Order and Fourth Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238). Although the Press Release issued on September 15, 1999, states that the Commission adopted a standard for determining whether ILECs must unbundle a network element, the text of the Order has not been released to date. The nature of the standard is, therefore, unknown at this time. CBT continues to maintain, however, that given competition in billing and collection services, such services could not reasonably be required to be unbundled.

standards the Commission may ultimately set for determining if an element must be unbundled, the availability of the element outside the incumbent's network must be considered as an independent criteria."[33] As noted in Section III. above, the information needed for CMRS providers to bill CPP charges is available to them as BNA. Because BNA is available to carriers outside of the network under contract or tariff, carriers can bill and collect for themselves or contract with a third parties for billing and collection services. Thus, access to billing information as a UNE is not necessary for CPP offerings nor will its unavailability as a UNE "impair" a CMRS provider's ability to offer CPP.

Finally, even if the Commission determines that the information needed to bill CPP is a network element and must be provided on an unbundled basis, the Commission's objective of providing seamless nationwide CPP will not be advanced. As noted by Bell Atlantic, it is "not feasible for the industry to rely on unbundled network elements to provide CPP service" since only ILECs have the obligation to provide these elements.[34] Other carriers such as CLECs, long distance companies, and other CMRS providers are not required to provide information for billing CPP-related charges incurred by their customers. Without sufficient information from these carriers, CMRS providers offering CPP will face severe leakage as a result of their inability to bill these carriers' customers. Although the Commission seeks to address this difference among carriers, i.e. imposing an obligation to provide billing information on non-ILEC carriers, CBT submits that the Commission can and should avoid the implications of invoking UNE requirements. The Commission need only recognize that the information necessary for billing CPP charges is available in the form of BNA.

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[33] CBT's Comments to Second Further Notice of Proposed Rulemaking in CC Docket No. 96-98, filed May 26, 1999, at 5.

[34] Bell Atlantic Comments to NOI at 9-10.

V. CONCLUSION

For the foregoing reasons, CBT respectfully submits that the Commission should refrain from adopting burdensome rules and regulations in order to ensure the success of CPP service offerings. Instead, the Commission should continue to allow CPP to function in accordance with consumer demand and market conditions. Moreover, the Commission should not re-regulate billing and collection services for CPP charges. Re-regulating billing and collection services is not only contrary to Commission precedent but, more importantly, it is contrary to the deregulatory goals established by the Telecommunications Act of 1996.

Respectfully submitted,

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